

LETTER OPINION
94-L-52

March 7, 1994

Mr. Ronald W. McBeth
Assistant Richland County
State's Attorney
Law Enforcement Center
413 3rd Avenue North
Wahpeton, ND 58075

Dear Mr. McBeth:

Thank you for your February 17, 1994, letter asking whether monies raised pursuant to N.D.C.C. ? 50-03-01 can be used for the building and/or renovation of facilities to be used by the Family Planning Branch of the Richland County Public Health Department.

As you mention in your letter, this office previously concluded that monies raised pursuant to N.D.C.C. ? 50-03-01 could not be used to provide office facilities for the county Social Service Board. 1981 N.D. Op. Att'y Gen. 232. This conclusion was based upon the interplay between N.D.C.C. ? 50-03-03 and N.D.C.C. ? 11-10-20.

N.D.C.C. ? 50-03-03 provides:

50-03-03. Relief expenditures paid from human services fund. All expenditures by the county for the relief of the needy must be paid out of the county human services fund. The fund is not subject to any other charges and is exempt from section 21-02-08.

N.D.C.C. ? 11-10-20 provides, in part:

The board of county commissioners shall provide a courtroom and jail, and shall provide offices in the courthouse of the county for the sheriff, county treasurer, register of deeds, auditor, clerk of the district court, state's attorney, county superintendent of schools, and any other officer who has charge of public records. If there is no courthouse in the county or if the courthouse erected has insufficient capacity, such offices must be furnished by the county in a suitable building at the county seat for all

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elected officials, and at any place within the county for appointive or administrative officials. . . .

Reading these sections together, this office concluded that "since the [human services] fund is not subject to any other charges, other than relief of the [needy], and since the county is obligated to provide offices for any officer having charge of public records, . . . that the county [human services] fund" could not be used to provide office facilities for the county Social Service Board. In my opinion, this conclusion is correct.

In the present situation you assert that unlike the county Social Service Board, the records of the Family Planning Branch of the Richland County Public Health Department are not "public." By this, I assume you to mean to say that the patient records of the Family Planning Branch are not open for public inspection. Other records, however, of the Family Planning Branch would be "open and accessible for inspection" by members of the public. N.D.C.C. ? 44-04-18. Further, the fact that certain records are confidential and otherwise not open for public inspection does not render the records "nonpublic." See Letter from Attorney General Helgi Johanneson to Grand Forks County State's Attorney John A. Alphson (January 15, 1965); Oliver v. Harborview Medical Center, 618 P.2d 76 (Wash. 1980).

Documents with some official import which are retained by public officers or employees in the course of their public duties constitute "public records." City of Grand Forks v. Grand Forks Herald, 307 N.W.2d 572 (N.D. 1981). Clearly, records retained by officials in charge of the Family Planning Branch of the Richland County Public Health Department relate to the performance of a governmental or proprietary function of the county. Accordingly, such records constitute public records.

Given the above, it is my opinion that monies raised pursuant to N.D.C.C. ? 50-03-01 cannot be used for the building and/or renovation of facilities to be used by

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the Family Planning Branch of the Richland County
Public Health Department.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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